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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,914	06/01/2001	Ferdinand Schermel		4663

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Ferdinand Schermel
RR# 10
Brampton, ON L6V 3N2
CANADA

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 01/24/2002

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/872,914	Applicant(s) SCHERMEL, FERDINAND	
	Examiner Stephen J. Castellano	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
 4a) Of the above claim(s) 2 and 10-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 11-21 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4.

Applicant stated that claims 1-21 are readable on the elected specie of Group A: Fig. 1. However, this specie doesn't support the plurality of attachable containers stacked and secured on top of said attachable container as stated in claim 2 or the luggage devices or general purpose carts of claim 10.

Therefore, claims 1 and 3-9 have been treated on their merits while claims 2 and 10-21 have been withdrawn from further consideration.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is indefinite because the scope of claim 3 is unclear. The phrase "means for connecting said wheeled container secured to said attached container to other said wheeled container secured to said attached container" could be repetitious of the "means for securing ..." recited in claim 1. It can't be determined if an error was made in repeating the very same structure or if an additional means for securing is being claimed. It can't be determined what applicant intends to secure, the very same said wheeled container and at least one said attachable container, another wheeled container, another attachable container.

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Applicant should be aware that the word "said" when it precedes a element must be interpreted as referring to a previously described element. When new elements are introduced, they must be preceded with an article such as, "a" or "an" and must not be preceded by "said." The "other said wheeled container" phrase is confusing because it can be determined if a new element is being introduced or if the original wheeled container is being referred to. When a claim includes two similar elements, such as two wheeled containers, applicant should be careful when referring to either one of the elements. For example, referring to "said wheeled container" wouldn't adequately distinguish between either of the two wheeled container. Use of words such as one, another, first, second, third, etc. are helpful in distinguishing between elements. Use of intended use words such as wheeled, attached, refuse, recycle and stacked can be used to distinguish between elements. Use of alternate words such as container, receptacle, canister, bin, can, box, etc. can be helpful in distinguishing between similar elements.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 8 and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tolbert, Jr. (Tolbert).

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Claims 1, 3-6, 8 and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Evans.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tolbert in view of Evans.

Tolbert discloses the invention except for the stacking of an attached container on top of the wheeled refuse container. Evans teaches two containers 1 stacked on top of a wheeled container (cart 28) and a strap 31 as an over center clasp. It would have been obvious to add another container to one of the wheeled containers of Tolbert to provide further storage space for a third type of recyclable or refuse item in order to accommodate further variety within a convenient system of containers that are attached to each other and can be moved in unison.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tolbert in view of Evans as applied to claim 6 above, and further in view of Ferbrache.

The combination of Tolbert and Evans discloses the invention except for the handle of Ferbrache. Ferbrache teaches a latching handle. It would have been obvious to replace the side handle of Tolbert with Ferbrache's latching handle in order to incorporate a lid latch with no additional hardware and allow for secure lid locking so that refuse or recyclables do not inadvertently spill from the containers during transport.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035.

The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
January 12, 2002